

REMARKS

Reconsideration and allowance are respectfully requested.

Applicant appreciates the Interview with Examiner Nguyen on May 28, 2004 to discuss the proposed draft Amendment faxed to the Examiner on May 26, 2004.

Further to the discussion, Applicant is filing this Amendment with an RCE. The amendments particularly point out and distinctly claim the subject matter of the invention. Antecedence for the amendments exists in the original application which includes the drawings. No new matter has been added. Entry and allowance are requested.

Claims 1-12 are patentable under 35 U.S.C. 102(b) over Prindle.

The present claims define a kitchen utensil having a handle with a cross-section that is substantially V-shaped or U-shaped.

Prindle does not describe, teach nor suggest a utensil with a handle and a tool for handling food products with the handle having a substantially V-shaped or U-shaped cross-section perpendicular to a longitudinal direction of the utensil.

Prindle relates to a spoon, knife and fork set that can be stacked by magnetic means in each their handles. Prindle

expressly teaches throughout the specification, drawings and claims that the handles of each of the elements must be substantially flat with a width of the flat handle being greater than a thickness of the flat handle. Nothing in the Prindle reference defines, teaches, describes, suggests or even inherently provides for a handle with a V-shaped or a U-shaped cross-section.

To be anticipating, a prior art reference must disclose "each and every limitation of the claimed invention[,]... must be enabling[,] and must describe...[the] claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

The Examiner's rejection on page 2, paragraph 2, is completely silent as to that inventive feature which is being claimed. For an invention to be anticipated, it must be demonstrated that each and every element of the claimed invention is present in the "four corners" of a single prior art, either expressly described therein or under the principle of inherency. Lewmar Marine Inc. v Barient Inc., 3 USPQ2d 1766, 1767-1768 (CAFC, 1987). The absence from prior art reference any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible, Inc., 230 USPQ 81, 84 (Fed. Cir. 1986).

Nothing in Prindle describes, teaches or suggests the

claimed features. Therefore, the reference cannot anticipate the present invention as claimed.

Since the cited reference does not disclose all the elements of the present invention, the reference cannot anticipate the present invention. Thus, lacking an element of the claims, the reference cannot anticipate the invention. Carmen Indus., Inc. v. Wahl, 220 USPQ 481, 485 (Fed. Cir. 1983).

If the Examiner relies on the cross section in Figure 3 attention is kindly drawn to the magnet in each of the flat handles of the fork, knife and spoon of Prindle which have been stacked in the cross-sectional view of figure 3. Contrary to the Examiner's presumption each of the flat handles has a cross-hatching and the combined three flat handles have cross-hatches to show the magnets in each of the flat handles and to distinguish each of the flat handles from the other which does not come anywhere close to anything indicating a V-shaped or U-shaped cross-section as claimed.

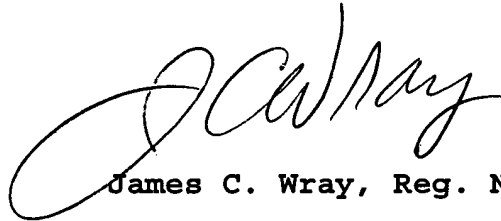
The prior art reference must disclose every feature of the claimed invention, either explicitly or inherently. Hazani v. U.S. Intern. Trade Comm., 44 USPQ2D 1358 (Fed. Cir. 1997). "To establish inherency, the extrinsic evidence 'must make it clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" In re Robertson, 48

USPQ2d 1949, 1951 (Fed. Cir. 1999) quoting from Continental Can Co. v. Monsanto Co., 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

"Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. Id. 20 USPQ2d at 1749.

Since Applicant has presented a novel, unique and non-obvious invention, reconsideration and allowance are respectfully requested.

Respectfully,

A handwritten signature in black ink, appearing to read 'J C Wray', is written over the typed name.

James C. Wray, Reg. No. 22,693

Meera P. Narasimhan, Reg. No. 40,252

1493 Chain Bridge Road, Suite 300

McLean, Virginia 22101

Tel: (703) 442-4800

Fax: (703) 448-7397

July 19, 2004